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PATENT APPLICATION
10/511,056

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Ralf Prenzel, et al.
Serial No.:	10/511,056
Date Filed:	October 11, 2004
Group Art Unit:	2618
Confirmation No.:	6152
Examiner:	Safaipour, Bobbak
Title:	METHOD FOR TRANSMITTING DATA, PARTICULARLY HAVING MULTIMEDIA CONTENTS, IN A MOBILE RADIO TELEPHONE NETWORK

MAIL STOP – AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicants request pre-appeal review of the final rejection issued in the Office Action mailed February 12, 2009 (“Final Office Action”). No amendments are being filed with this request. At the time of the Final Office Action, Claims 31-38 were pending in this Application. Claims 31-38 were rejected. This Request is being filed concurrently with a Notice of Appeal.

Applicants respectfully request pre-appeal review of the final rejections for the following reasons.

Rejections under 35 U.S.C. §103

Claims 31-38 were rejected under 35 U.S.C. §103(a) as being unpatentable over International Application No. WO 01/28171 A1 by Kalevi Ratschunas, et al. (“*Ratschunas*”) in view of U.S. Patent No. 7,127,264 issued to Daniel Hronek, et al. (“*Hronek*”). In response, Applicants point out that the prior art does not teach or suggest the invention as claimed.

According to the invention as claimed, two specific non-delivery reasons need to be provided: (1) data could not be delivered to the second communications unit; and (2) data could have been delivered, but were not received by the second communications unit. Claim 31 recites "wherein, upon non-delivery of the data to the second communications unit, the transmission status message includes a non-delivery reason *which is selected from at least two non-delivery reasons*, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit." (emphasis added). Claim 38 recites a similar feature. "An object of the present invention is, therefore, to offer the transmitter or sender of data, particularly of a multimedia message (MM), *a more detailed item of information concerning the deliverability of the data which it has sent.*" (Specification at [0011]) (emphasis added). By providing more detailed information concerning the deliverability, the sender may then make informed decisions about whether to resend the message.

It is possible with the switching arrangement described to notify the sender, or the first communications unit, of a message if data which it has sent to a recipient, or the second communications unit, could not be delivered to the recipient at all. *The sender can then decide, for example, to send the corresponding data again.* Compared with the currently known state of the art on this matter, the *sender is therefore given the opportunity to distinguish the non-availability of a recipient from the status in which the recipient has not called up data provided for it, since it did not wish to receive the messages or was simply prevented from calling up the data (for example, due to technical problems).*

(Specification at [0028]) (emphasis added). Rather than a simple delivery confirmation, the specification teaches that more detailed delivery information is provided.

FIG. 3 shows, in general terms, the possible statuses 212 of the status field "X-Mms-Status" 210 in the message of the type "M-Delivery.ind" which is explained in detail in FIG. 4. A number of statuses are currently defined in the MMS specification [2, 5] which are transmitted in an MMS delivery status notification or transmission status messages "M-Delivery.ind." The various statuses indicate whether the MM has been transmitted successfully to the recipient (status: "retrieved"), whether the MM has been rejected by the recipient (status: "rejected"), whether the recipient has received the notification concerning the arrival of the MM in its mailbox and can download

it later (status: "deferred"), whether the recipient has not recognized the MM (status: "unrecognized") and whether the recipient has not downloaded the MM within the period of validity and has therefore not received it in full (status: "expired")

(Specification at [0050]). Thus, the invention requires that “the transmission status message includes a non-delivery reason *which is selected from at least two non-delivery reasons*, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit.”

The rejection improperly reduces the clear claim language to the simplified limitation that the non-delivery reason is selected from “at least two non-delivery reasons” without any further qualification of the nature of the non-delivery reason (in spite of the clear language of the claims). The rejection admits that “Ratschunas fails to specifically disclose that the non-deliver reason is selected from at least two non-delivery reasons.” (OA at 4). Hronek is therefore cited as disclosing,

a non-delivery reason which is selected from at least two non-delivery reason, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit (figure 6; col. 3, lines 42-49; when the attempted delivery of the short message failed because the intended user was out of the service area) and that the data could have been delivered, but were not received by the second communications unit (figure 6; col. 3, lines 42-49; when the attempted delivery of the short message failed because the intended user had his or her communication device turned off).

(OA at 4). This premise of the rejection fails, however, because Hronek does not teach or suggest “the transmission status message includes a non-delivery reason *which is selected from at least two non-delivery reasons*, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit.”

The rejection claims that Hronek discloses two reasons why an attempted delivery of a short message has failed: (1) intended user was out of the service area; and (2) intended user had his or her communication device turned off. Obviously, both reasons fit only into the first non-delivery reason of the presently claimed invention, that “(1) data could not be

delivered to the second communications unit,” but they do not fit into the second non-delivery reason of the presently claimed invention, that “(2) data could have been delivered, but were not received by the second communications unit.”

In particular, Hronek merely teaches that a single “failure” message is sent no matter what the reason for the delivery failure.

When the attempted delivery of the short message has failed because, for instance, the intended user was out of the service area, or had his or her communication device turned off, *the MSC 603 informs the HLR 602 of the failure*. The HLR 602 then turns on an SMS notification indicator flag for the subscriber, and the SMSC 601 retains the failed message for a later delivery attempt.

(Hronek at 3:43-49) (emphasis added). Hronek merely “informs the HLR of the failure,” without providing any information as to the reason for the delivery failure. This fact is confirmed by Hronek’s teaching that the HLR do only one action in response to being informed of the failure. Specifically, Hronek teaches that “HLR 602 then turns on an SMS notification indicator flag for the subscriber, and the SMSC 601 retains the failed message for a later delivery attempt.” Hronek does not teach or suggest deciding between sending the message again or discarding the message because the HLR has not receive sufficiently detailed information from the delivery failure message to inform such a decision. Thus, Hronek fail to teach or suggest “the transmission status message includes a non-delivery reason *which is selected from at least two non-delivery reasons*.” The invention as claimed in claims 31 and 38 is patentable in view of the combined teachings of Ratschunas and Hronek. The invention as claimed in the dependent claims is patentable for similar reasons.

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Conclusion

Applicants submit this Argument in Support of Pre-Appeal Brief Request for Review along with a Notice of Appeal. Applicants authorize the Commissioner to charge Deposit Account No. 50-4871 in the amount of \$540.00 for the Notice of Appeal fee. As Applicants had previously paid for a one-month extension fee of \$130 for the filing of the Response to Final Office Action on June 11, 2009, the Commissioner is authorized to charge the amount of \$980.00 for the remaining Three-Month Extension fee. Applicants believe there are no further fees due at this time; however, the Commissioner is hereby authorized to charge any additional fees necessary or credit any overpayments to Deposit Account No. 50-4871 of King & Spalding LLP.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.457.2026.

Respectfully submitted,
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Date: _____

7/29/09

SEND CORRESPONDENCE TO:

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